

## EXHIBIT B

Hazard, Geoffrey 8/17/2007 9:35:00 AM

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1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF DELAWARE  
3  
 4 MBIA INSURANCE CORPORATION AND :  
5 WELLS FARGO BANK, N.A.(f/k/a :  
6 WELLS FARGO BANK MINNESOTA N.A.) :  
7 AS TRUSTEE OF SFC GRANTOR TRUST :  
8 SERIES 2000-1, SFC GRANTOR TRUST, :  
9 SERIES 2000-2, SFC GRANTOR TRUST, :  
10 SERIES 2000-3, SFC GRANTOR TRUST, :  
11 SERIES 2000-4, SFC GRANTOR TRUST, :  
12 SERIES 2001-1, SFC GRANTOR TRUST, :  
13 SERIES 2001-2, SFC OWNER TRUST, :  
14 SERIES 2000-I, AND SFC GRANTOR :  
15 TRUST, SERIES 2001-3, :  
16 Plaintiffs/  
17 Counterclaim Defendants, :  
18 vs. :  
19 ROYAL INDEMNITY COMPANY, :  
20 Defendant/  
21 Counterclaim Plaintiff. :C.A. No.  
22 02-1294-JJF  
23 ROYAL INDEMNITY COMPANY, :  
24 Third-Party Plaintiff, :  
25 vs. :  
18 ANDREW N. YAO, STUDENT LOAN :  
19 SERVICING LLC, STUDENT LOAN :  
20 ACCEPTANCE II LLC, STUDENT LOAN :  
21 ACCEPTANCE III LLC, STUDENT LOAN :  
22 ACCEPTANCE V LLC, STUDENT LOAN :DATE:  
23 ACCEPTANCE VIII LLC, STUDENT LOAN :AUGUST 17, 2007  
24 ACCEPTANCE IX LLC, SFC FINANCIAL :TRACK II WITNESS:  
25 LLC I, SFC FINANCIAL LLC II, :GEOFFREY C. HAZARD, JR.  
SFC FINANCIAL LLC VI, SFC :  
FINANCIAL LLC VII, :  
23 Third-Party Defendants, :  
24 DEPOSITION OF GEOFFREY C. HAZARD, JR.  
25 AUGUST 17, 2007

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1 APPEARANCES OF COUNSEL:  
2  
 3 ROYAL INDEMNITY COMPANY, :  
4 Counter-Claimant, :  
5 vs. :  
6 MBIA BANK AND WELLS FARGO BANK :  
7 MINNESOTA N.A., :  
8 Counter-Defendants. :  
9 CHARLES A. STANZIALE, JR., :  
10 CHAPTER 7 TRUSTEE OF STUDENT :  
11 FINANCE CORPORATION, :  
12 Plaintiff, :  
13 vs. :C.A. No.  
14 PEPPER HAMILTON LLP, et al., :04-1551-JJF  
15 Defendants. :  
16 CHARLES A. STANZIALE, JR., :  
17 CHAPTER 7 TRUSTEE OF STUDENT :  
18 FINANCE CORPORATION, :  
19 Plaintiff, :  
20 vs. :C.A. No.  
21 McGLADREY & PULLEN LLP AND :05-72-JJF  
22 MICHAEL AQUINO, :  
23 Defendants. :  
24 ROYAL INDEMNITY COMPANY, :  
25 Plaintiff, :C.A. No.  
vs. :05-165-JJF  
PEPPER HAMILTON LLP, et al., :  
Defendants. :  
25

1 APPEARANCES OF COUNSEL:  
2  
 3 FOR THE ROYAL INDEMNITY COMPANY:  
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1 exclusively thereafter.

2 Q. Okay. So in March or April, you received  
3 one or two phone calls, and at that point in time,  
4 you accepted the representation?

5 A. No. I accepted an assignment to be an  
6 expert witness on behalf of Pepper Hamilton.

7 Q. Okay. Sorry. Thank you.

8 And you received – you may have received  
9 some papers from Ms. Ainslie?

10 A. Yeah. I think she sent me a couple of  
11 letters, as I recall, but that was it.

12 Q. Is what she sent you described in the  
13 attachment to your report as material –

14 A. I don't – well, it may be referred to in  
15 general terms, but it's not specifically identified,  
16 as far as I can recall.

17 Q. Would it have been the waiver letters?

18 A. It might have been.

19 Q. Did you have any communication -- when did  
20 you receive the communication from Mr. Gilman?

21 A. I would say sometime in early May is the  
22 best recollection I have.

23 Q. What did you do with the material that you  
24 received from Ms. Ainslie? Have you retained that?

25 A. Yeah. I think I did. It's in the file.

1 Then he said it's a big messy lawsuit, and  
2 I said I understood that, and I said I would like to  
3 see, you know, various documents that tell me what  
4 the case is about, and thereafter, he sent me some.

5 Q. And is what he sent you the documents that  
6 are described in the attachment to your expert  
7 report?

8 A. Yes.

9 Q. If you would like to have it in front of  
10 you, I'm happy to mark the expert report so –

11 A. That's all right. Whatever.

12 Q. So we have it on the more formal basis.

13 A. That's fine. It's part of the report.

14 Maybe you want to mark the report.

15 MR. GROSSBART: Let's mark the report –

16 MR. WATERS: Yeah.

17 MR. GROSSBART: – just so we –

18 MR. WATERS: Know what's in front of him.

19 MR. GROSSBART: Just so we have a  
20 consistent record.

21 (Deposition Exhibit 2002-II was marked  
22 for identification.)

23 BY MR. WATERS:

24 Q. Did you receive, from Mr. Gilman or anyone  
25 else, a document that included facts that you were to

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1 Q. Did you have any communication with anyone  
2 at all, between this March-April phone call and your  
3 early May 2007 communication with Mr. Gilman, with  
4 respect to the subject of SFC, Pepper Hamilton, or  
5 your retention?

6 A. No.

7 Q. Did you receive any documents or material  
8 from anyone with respect to those subjects during  
9 that same time period?

10 A. Not before I talked to Mr. Gilman, as far  
11 as I can remember.

12 Q. Okay. What was the nature of your  
13 communication with Mr. Gilman? Was it a phone call?

14 A. Yes.

15 Q. Okay. And did he convey any substantive  
16 information to you in that conversation about the  
17 engagement or the issues?

18 A. Well, as I recall, he said – I said what  
19 happened to Schnader, because my first contact had  
20 been with Ainslie. He said, well, Cahill Gordon was  
21 representing Pepper Hamilton, and he inferred that  
22 Schnader would continue to represent Gagne, if I  
23 understood it. So he said, "I'm representing Pepper  
24 Hamilton," and I said, "Fine. We can proceed on that  
25 basis."

1 assume for purposes of your opinions?

2 A. I guess the answer is yes. He sent me a  
3 lot of stuff that's listed in this attachment to the  
4 report, and a lot of those are facts and a lot of  
5 them were not in dispute. For example, Mr. Gagne did  
6 represent SFC, et cetera, et cetera.

7 Q. I'm talking about a specific document that  
8 would have set forth certain specific facts which you  
9 may have incorporated into your report as facts that  
10 you would assume.

11 A. I see.

12 Q. Not the underlying documents.

13 A. Documents, yeah. I think the way we did  
14 this, it varies from case to case. Sometimes I ask a  
15 lawyer to write out a separate document called a  
16 statement of facts. Here, I think what I did was to  
17 ask Mr. Gilman to give me a beginning recitation of  
18 facts as he wanted me to proceed, and then I used  
19 that as a beginning place for writing my opinions.

20 Q. And was that beginning recitation of facts  
21 in a document?

22 A. No, I think it was an e-mail.

23 Q. It was an e-mail?

24 A. Yeah.

25 Q. I see. Have you retained that e-mail?

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1 A. Not as far as I know.  
 2 Q. Okay. How, physically, did you prepare  
 3 the report in this case? Do you type it yourself --  
 4 A. Well --  
 5 Q. Okay.  
 6 A. Yeah.  
 7 Q. So do you use a laptop?  
 8 A. Yeah.  
 9 Q. I'm sorry. You do?  
 10 A. Yes.  
 11 Q. On your laptop, you begin to create the  
 12 document, and as you revise it, do you write over, so  
 13 that there's --  
 14 A. Yeah, yeah.  
 15 Q. Okay. So that there's one document, and  
 16 the changes are shown in the memory?  
 17 A. Whatever happens. I don't know. I just,  
 18 in this case, I suspect it was probably mostly  
 19 augmentation, as distinct from writing over.  
 20 Q. Okay.  
 21 A. I mean, you start with what you've got,  
 22 and you add to it and change it as you go along.  
 23 Q. So is it fair to say, then, that you  
 24 started with a document that was put into your  
 25 computer from an e-mail from Mr. Gilman, and then you

1 at?  
 2 A. In writing the report, yeah. Since then,  
 3 he gave me the depositions of Bruce Green and  
 4 Mr. Glazer. I think that was it.  
 5 MR. GILMAN: I think also the two  
 6 supplemental reports of Professor Green and  
 7 Mr. Glazer. So there were four documents, in  
 8 addition to Exhibit E, the two depositions and the  
 9 two supplemental reports.  
 10 BY MR. WATERS:  
 11 Q. And, Professor, does that constitute the  
 12 full body of materials that you considered in the  
 13 preparation of your report, then? The documents that  
 14 are listed in Exhibit E and the four that have just  
 15 been identified in this deposition?  
 16 A. Well, the report was based on the ones in  
 17 Exhibit E.  
 18 Q. Oh, yes.  
 19 A. I'm just telling you that, in addition to  
 20 that, he gave me these other things.  
 21 Q. Thank you for correcting me.  
 22 That constitutes the full body of material  
 23 that you have reviewed with respect to this matter?  
 24 A. Yeah.  
 25 Q. Okay. Did you read the entire transcript

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1 added to that?  
 2 A. That's my recollection, yeah.  
 3 Q. And the final document that came out of  
 4 that process is the document that we have marked  
 5 Exhibit 2002-II?  
 6 A. Yeah.  
 7 Q. Now, were the exhibits prepared  
 8 differently? Let me ask you that.  
 9 A. Yeah. We prepared -- well, I sent him my  
 10 CV. I think that's one of them.  
 11 Q. Okay. So you sent him your CV. He put it  
 12 in electronic form and sent it back to you?  
 13 A. No. I sent it e-mail, and I told him to  
 14 make the list of stuff he'd sent me. That's my usual  
 15 practice.  
 16 Q. And that's Exhibit E?  
 17 A. Whatever, yeah.  
 18 Q. If you take a look, let's make sure.  
 19 A. Yeah.  
 20 Q. That's Exhibit E, and that was prepared by  
 21 Mr. Gilman?  
 22 A. Yeah.  
 23 Q. Have you reviewed it?  
 24 A. Yeah.  
 25 Q. And are these all the things that you look

1 of the deposition of Roderick Gagne?  
 2 A. Oh, yeah.  
 3 Q. You've read no other depositions?  
 4 A. I read the deposition of Professor Green  
 5 and Professor Glazer, and I think that's all. There  
 6 is some reference, somewhere or other, to statements  
 7 made by some of the subordinate personnel in SFC, but  
 8 I think that was in -- that was something asked of  
 9 Mr. Gagne. That was a subject matter in the  
 10 interrogation of him in his deposition.  
 11 Q. And this list of cases in which you've  
 12 testified, did you prepare that? Which is Exhibit D  
 13 to your report.  
 14 A. Yeah. I don't know how up-to-date it is,  
 15 but yeah, that's my standard list, and let me just --  
 16 there may be some cases since then.  
 17 Yeah. There's -- I mean, yes, I prepared  
 18 this. This is what I provide when requested. There  
 19 is a further deposition on behalf of Don -- I'm  
 20 blanking on his name. He's down in L.A. I can  
 21 produce it for you, and Richard Zuckerman of the  
 22 Sonnenschein firm that was taken in July. I think  
 23 that's it.  
 24 MR. GROSSBART: We probably have a copy of  
 25 that.

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1 Q. Now, could you take a look at  
2 Exhibit 2002-II –  
3 A. Sure.  
4 Q. – and tell me if you can identify for me,  
5 in this document, any paragraphs that you are certain  
6 you prepared completely by yourself and are not  
7 paragraphs that Mr. Gilman sent and you worked on?  
8 A. No. I think some of the description and  
9 qualification of the witness is cast in terms that  
10 are different from the ones I ordinarily use, so I  
11 assume he put those in. For example, start from  
12 there.  
13 Q. Well, I'm asking you a narrower question.  
14 I'm asking you whether you can identify for me, in  
15 this document, a specific paragraph that you can tell  
16 me you're certain that you prepared this document –  
17 this paragraph by typing it yourself, as distinct  
18 from modifying something that Mr. Gilman –  
19 A. No.  
20 Q. There's no paragraph you can point to and  
21 tell me that about it?  
22 A. I think that's right.  
23 Q. Okay.  
24 MR. WATERS: I would ask again to see the  
25 e-mail that you sent to Professor Hazard. You told

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1 the letter.  
2 MR. GILMAN: I have my response back to  
3 you.  
4 MR. WATERS: You don't have the letter?  
5 MR. GILMAN: I don't have your request to  
6 me, but I have my response back to you that says the  
7 only statements of facts provided to Professor Hazard  
8 is that set forth in haec verba his report. I assume  
9 I was paraphrasing your request accurately.  
10 MR. WATERS: No. I think my request was  
11 broader – we can go back and establish what it is –  
12 so that the statement of facts will be an example of  
13 documents provided to Professor Hazard that  
14 constitute material that's included in his report,  
15 specifically wording, whether it be by way of a  
16 statement of facts or anything else.  
17 The witness has testified that an e-mail  
18 from you contained a document from which he began his  
19 report and is unable to identify specific additions,  
20 at least not yet – we'll certainly spend some more  
21 time on this – that he made to that document. I  
22 think I'm entitled to have that e-mail document that  
23 you sent to Professor Hazard.  
24 Now, my question to you is, first, does  
25 that exist? Have you retained that document?

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1 me no document exists. Did you mean to exclude an  
2 electronic document?  
3 MR. GILMAN: No. You asked if there was a  
4 statement of facts, for example.  
5 MR. WATERS: No, if you go back –  
6 MR. GILMAN: I haven't interrupted you  
7 once, Michael. Please.  
8 MR. WATERS: Okay.  
9 MR. GILMAN: You asked if there was a  
10 statement of facts that was provided to  
11 Professor Hazard. Expert witnesses, for example,  
12 Mr. Humphreys, has appended, to his report, a  
13 statement of facts. Some witnesses may do that as a  
14 separate exhibit, and then simply have an opinion  
15 report that refers to it. Other experts do things  
16 differently. They're all unique.  
17 I have told you that there is no  
18 free-standing statement of facts and that all of the  
19 facts that are assumed by or were considered by  
20 Professor Hazard in his report are set forth in haec  
21 verba on the face of the document that you have  
22 marked as Exhibit 2002-II. So you have it.  
23 MR. WATERS: Bear with me just one moment.  
24 Thank you. I think that my request to you  
25 was broader than just statement of facts, if you have

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1 MR. GILMAN: I don't think so.  
2 MR. WATERS: It doesn't exist anymore?  
3 MR. GILMAN: If you had listened to what  
4 Professor Hazard said, he said –  
5 MR. WATERS: You and I should not –  
6 MR. GILMAN: You're interrupting me again.  
7 MR. WATERS: No. But you and I should not  
8 have a kind of a conversation that might interfere –  
9 if you want to have a conversation, you can ask the  
10 witness –  
11 MR. GILMAN: I'll tell you what we do.  
12 You ask your questions so that we can get the  
13 deposition over. If you want to make any request for  
14 me to produce things, make it to me, and I'll take it  
15 under advisement. Let's not waste the deposition.  
16 Next question.  
17 MR. GROSSBART: Well, I would like the  
18 e-mail. I will make the request.  
19 MR. GILMAN: I'll take it under  
20 advisement.  
21 MR. GROSSBART: I would like the e-mail  
22 today before the conclusion of the deposition.  
23 That's under advisement, too?  
24 MR. GILMAN: Sure. Next question.  
25 MR. WATERS: I would join in

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1 Mr. Grossbart's request to have the e-mail, or a  
 2 printout of the e-mail, given to us this afternoon  
 3 from your office, from whatever computer person that  
 4 you have, so that we can have it before us before we  
 5 conclude Professor Hazard's deposition, and maybe, at  
 6 the lunch break, you could consider that request.

7 MR. GILMAN: I understand your request.

8 Next question.

9 BY MR. WATERS:

10 Q. About how much time have you spent with  
 11 respect to this matter, Professor, since your  
 12 engagement?

13 A. Somewhere around 25-30 hours, I think.

14 Q. Have you rendered a bill?

15 A. No, I usually wait until after the  
 16 deposition.

17 Q. After the deposition, you plan to render a  
 18 bill? And then an additional bill after the trial?

19 A. Oh, sure.

20 Q. Okay. Your engagement -- the terms of  
 21 your engagement are set forth in your report. Is the  
 22 \$5,000 applied against any time, or is that in  
 23 addition to \$800 an hour for the time?

24 A. It's in addition.

25 Q. Okay. And you have received the \$5,000?

1 A. Yes. And "T" means trial.  
 2 Q. "T" means trial testimony?  
 3 A. Yeah.  
 4 Q. These are all the cases -- this goes back  
 5 over a period, then, of eight years?

6 A. Yeah.

7 Q. Okay. If you would go to the third case,  
 8 Jeff Shumway --

9 A. Yes.

10 Q. What was the issue in that case, in a  
 11 little more detail than --

12 MR. GROSSBART: Sorry. Which case are you  
 13 starting with?

14 MR. WATERS: Jeff Shumway, the third one  
 15 down.

16 THE WITNESS: That's a long time ago.

17 MR. GILMAN: It's twice as far as the  
 18 federal rules would require disclosure, but if you  
 19 want to waste your time on it, go ahead.

20 THE WITNESS: In that case, somebody in  
 21 the Meyer firm represented two entrepreneurs in a  
 22 real estate venture, and they were -- the two  
 23 entrepreneurs had a consistent interest at the  
 24 beginning, but then they got into a dispute, and the  
 25 question is whether the lawyer properly -- as I

38 1 A. I can't recall.

2 Q. And does that continue to be your rate,  
 3 your hourly rate for this work, \$800 an hour?

4 A. Yes.

5 Q. Is there a different rate for testifying?

6 A. No.

7 Q. Is there a different rate for travel time?

8 A. Usually I charge 500 an hour for travel,  
 9 particularly if there's something else I can do,  
 10 flying across country.

11 Q. Okay. Now, if we could spend a little  
 12 time with this exhibit in which you have listed the  
 13 other cases in which you have testified by way of  
 14 deposition or trial testimony.

15 These pages are not numbered.

16 A. Just refer to them by the name on the top  
 17 line.

18 Q. I'm at the first one, Jay Lefkowitz.

19 A. That's a long time ago.

20 MR. GILMAN: I haven't checked, but I  
 21 think they're in chronological order.

22 THE WITNESS: They are.

23 BY MR. WATERS:

24 Q. I take it the "D" means you've testified  
 25 by way of deposition?

1 recall, whether he terminated trying to handle both  
 2 of them on time, and whether he, after the next stage  
 3 of it, continued to represent one of the disputing  
 4 parties, even though he had, at an earlier stage in  
 5 the transaction, represented both of them.

6 That's my best recollection.

7 BY MR. WATERS:

8 Q. And were you -- on whose behalf were you  
 9 offered as an expert?

10 A. Con. If you look at it, it says that it  
 11 was critical of the lawyer.

12 Q. I didn't know what that meant. Okay.

13 That helps.

14 If you would turn to the one that says  
 15 Howard Jacobs, can you tell me, very briefly, what  
 16 the conflict issue is there?

17 A. That was a divorce case involving Mr. and  
 18 Mrs. Camuto or Camuto. I don't know how to pronounce  
 19 it.

20 Mr. Camuto went around to see the lawyer  
 21 and had a preliminary interview with him about that  
 22 lawyer's representing Mr. Camuto, and then -- it was  
 23 a two-person law firm, as I remember -- that lawyer's  
 24 partner undertook the representation of the wife.

25 So the question was whether the

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1 on SFC matters, were deposed?  
 2 Are you at least aware generally of that?  
 3 A. Yes.  
 4 Q. And you were not provided with any of  
 5 those depositions; correct?  
 6 A. That's correct.  
 7 Q. And you didn't ask to look at them, I take  
 8 it; is that right?  
 9 A. I assume that counsel would have provided  
 10 them to me if they had stuff that was important to  
 11 know.  
 12 Q. So without looking at those depositions or  
 13 considering that testimony, you're not in a position,  
 14 sitting here today, to say how that review may or may  
 15 not, or might or might not, impact your opinions; is  
 16 that right?  
 17 A. Of course.  
 18 Q. You, at various places, for example,  
 19 Page 9 of your report -- and I believe there are  
 20 other examples, I don't need to belabor it -- but you  
 21 have, for example in the paragraph numbered 2 on  
 22 Page 9 of your report, the sentence, "There is no  
 23 evidence that the Family had such knowledge..."  
 24 et cetera.  
 25 Do you see that?

1 Q. How about in the last four or five years?  
 2 A. No, I don't think so.  
 3 Q. Okay. And with Schnader -- attorneys at  
 4 the Schnader firm, say, for last four or five years,  
 5 whether or not it resulted in testimony or not, any  
 6 work with the Schnader firm?  
 7 A. Yeah. I did some work with Schnader.  
 8 Q. Can you describe, generally, what that  
 9 was?  
 10 A. It was not as an expert witness, and it  
 11 was with the guy that succeeded Bernie Segal as the  
 12 managing partner, and I can't bring his name to bear.  
 13 It was something very short in time and span. That's  
 14 about all I can do.  
 15 Q. And that's all your recollection?  
 16 A. That's all I can recall.  
 17 Q. I know some materials were produced with  
 18 respect to other Pepper Hamilton-related work --  
 19 A. Yeah.  
 20 Q. -- but have you worked with Pepper  
 21 Hamilton, not where they were the subject of the  
 22 work, but where they were representing --  
 23 A. You mean working with that law firm on  
 24 something?  
 25 Q. Correct.

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1 A. Yeah.  
 2 Q. When you say there's no evidence, you  
 3 don't purport to be making a statement about all the  
 4 evidence in this case, do you? You were, rather,  
 5 commenting on there is no evidence, in your opinion,  
 6 within the more limited subset of materials that  
 7 you've received.  
 8 A. That's correct.  
 9 Q. That would be a more fair way of saying  
 10 the point; right?  
 11 A. Differently, I've not been provided any  
 12 evidence that.  
 13 Q. Okay. Are you currently doing any work on  
 14 other matters with other attorneys from the Cahill  
 15 firm?  
 16 A. No.  
 17 Q. Have you --  
 18 A. Wait a minute. I take that back. I'm not  
 19 currently doing any work. I think I have one open  
 20 file, but it's been dormant for two years, and for  
 21 all I know, it might be dormant always. It has to do  
 22 with the conduct of litigation in asbestos cases.  
 23 Q. And other than that, have you done any  
 24 work with Cahill attorneys?  
 25 A. In years past, I've done some.

1 A. If so, I can't remember any.  
 2 Q. Have you done any work consulting with  
 3 Pepper Hamilton, outside of the report situations  
 4 that have been disclosed?  
 5 A. Well, I have had some very modest co-work  
 6 with Barbara Mather, who is the managing partner, I  
 7 think, but that has to do with alumni business at  
 8 college. You didn't care about that.  
 9 Q. No. I'm really focused on where Pepper  
 10 Hamilton had an issue, perhaps, and sought your  
 11 consultative role.  
 12 A. Not that I recall. I've worked with other  
 13 firms, but I can't recall handling for them.  
 14 Q. One more question about this e-mail that  
 15 got the process started.  
 16 A. Yep.  
 17 Q. Just in round numbers, your report is  
 18 23 pages, single-spaced.  
 19 A. Yeah.  
 20 Q. Was the e-mail approximately that long as  
 21 well?  
 22 A. No. I can't recall, but I think --  
 23 obviously, a lot -- I mean, the stuff, for example,  
 24 in Mr. Glazer's book, that stuff was provided by  
 25 counsel, and probably was in an early draft.

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1 Q. So there really was more than one  
 2 e-mail –  
 3 A. I think there were two.  
 4 Q. – where you got input or suggested input  
 5 from the Cahill firm; is that right?  
 6 A. Yeah.  
 7 Q. In written form?  
 8 A. Right.  
 9 Q. Do you have the second e-mail?  
 10 A. All I've got – I don't think I have  
 11 either.  
 12 Q. So, were the e-mails typically such that  
 13 they contained the text or suggested text in the body  
 14 of the e-mail, or were they e-mails transmitting, for  
 15 example, Word or Word Perfect documents that you then  
 16 used to insert into your report?  
 17 A. I don't see the difference between those.  
 18 I think the e-mails had, as attachments, a draft  
 19 document to work on.  
 20 Q. Okay, and you got one such e-mail when the  
 21 report preparation process started, and at least one  
 22 more e-mail with suggested textual input midway  
 23 through the process or thereabouts?  
 24 A. Something like that, yeah.  
 25 Q. And do you think that's all there was, two

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1 Q. Right.  
 2 A. Yeah, oh, yes.  
 3 Q. Do you have that report?  
 4 A. No.  
 5 Q. In describing your work in that case, you  
 6 stated that Vinson & Elkins – and I'm quoting as  
 7 best as I could write down, "suitably raised  
 8 questions," and notwithstanding that effort,  
 9 information was not available to it that would  
 10 indicate fraud, or words to that effect.  
 11 Is that a fair statement?  
 12 A. Yeah, yeah.  
 13 Q. What were you referring to when you said  
 14 that Vinson & Elkins suitably raised questions? What  
 15 kinds of questions, and what made them suitable?  
 16 A. I remember, not very distinctly, one kind  
 17 of thing. It had to do with the preparation of, as I  
 18 recall, a quarterly filing with the SEC, and the  
 19 inside general counsel's office – inside counsel's  
 20 office in Enron – did a draft which they sent by  
 21 Vinson & Elkins's lawyer for review, and the  
 22 Vinson & Elkins lawyer said he thought that there  
 23 should be more detail in that disclosure than their  
 24 draft was prepared – was going to do.  
 25 And he took it up with, I think, the

1 e-mails?  
 2 A. That's my recollection.  
 3 Q. As a result of Mr. Waters' testimony, you  
 4 had a chance to –  
 5 MR. GILMAN: You mean Mr. Waters'  
 6 questioning? He tried, but I think it was still  
 7 questioning.  
 8 MR. GROSSBART: I did mean his  
 9 questioning.  
 10 Q. You've been through the report this  
 11 morning. As a result of that exercise, are you able  
 12 to identify a single paragraph within your report  
 13 that you drafted entirely?  
 14 A. No.  
 15 Q. Okay. In the Enron case, you defended the  
 16 conduct of the law firm of Vinson & Elkins; is that  
 17 correct?  
 18 A. I spoke on their behalf, yes.  
 19 Q. Did you give a deposition?  
 20 A. Yes.  
 21 Q. Do you have that deposition?  
 22 A. No.  
 23 Q. And did you write a report?  
 24 A. There was a report written before the  
 25 deposition.

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1 general counsel, certainly with the associate general  
 2 counsel – I think it was the associate general  
 3 counsel, and said, you know, I think we ought to do  
 4 this. The associate general counsel was a very  
 5 experienced security lawyer. Indeed, he had been  
 6 with the SEC for a substantial period, and the  
 7 document that Enron finally submitted was closer to  
 8 what that guy wanted to do, and had less information,  
 9 less detail, than what the Vinson & Elkins lawyer was  
 10 saying he thought ought to be in it.  
 11 My position or my opinion was that the  
 12 ultimate filing by the company, the ultimate  
 13 authority was being exercised by the in-house general  
 14 counsel's staff, particularly this fellow – I've  
 15 forgotten what his name was – and that I thought it  
 16 had an arguable question whether what the terms of  
 17 the disclosure ought to be. That is, it wasn't, as  
 18 far as I could see, clearly wrong, or wrong,  
 19 positively wrong, for the disclosure to be as limited  
 20 or as the general counsel's office wanted to make it.  
 21 I said, look, V&E raised the question,  
 22 presented their view, said we recommend, but got  
 23 turned down. I thought that was an adequate  
 24 disposition of it.  
 25 Another situation was in connection with

Hazard, Geoffrey 8/17/2007 9:35:00 AM

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1 MR. WATERS: So you won't produce, because  
 2 it doesn't – you refuse to produce the e-mail.  
 3 MR. GILMAN: You have not provided drafts  
 4 of your reports. We are not providing drafts of our  
 5 reports. What we have done is complied with Rule 26.  
 6 We've provided you with all of the information and  
 7 materials that were considered by the witness, and we  
 8 have provided you with his final report. So that's  
 9 where we are on that. I don't know that any of this  
 10 stuff exists. It doesn't exist in the witness's  
 11 files in any event.

12 MR. WATERS: Well, what you are now  
 13 calling a draft of the report sounds to me, from the  
 14 witness's testimony, like a draft of a report that  
 15 you prepared and sent to him.

16 MR. GILMAN: I think you're not  
 17 understanding, Mike. You can try to recharacterize  
 18 and put spins on things, but if you and I sit down  
 19 and have a conversation, and you explain to me what  
 20 you would like reflected, whether I put my fingers on  
 21 the keys or you put your fingers on the keys, it's  
 22 what you want reflected. It's your report.

23 MR. WATERS: This is a scrivener defense  
 24 that I've heard before, but –

25 MR. GILMAN: Now, look, why don't we do

1 Q. Professor Hazard, the e-mail that started  
 2 the process of report preparation that's been the  
 3 subject of the colloquy you've just witnessed, do you  
 4 still have the e-mail in the original form sent to  
 5 you?

6 A. I don't think so.

7 Q. Okay. Where were you, physically, when  
 8 you worked on the report?

9 A. At home.

10 Q. All right. Do you have a copy of  
 11 Mr. Glazer's book at your house?

12 A. No.

13 Q. Did you go to the library to get it?

14 A. No.

15 Q. Were the quotes from Mr. Glazer's book  
 16 that appear throughout the report provided to you in  
 17 the e-mail that was sent to you by counsel?

18 A. In an e-mail. I think there were two, and  
 19 I don't know whether it was the first or second.

20 Q. All right. So the block quotations  
 21 selected for your report were selected for you by  
 22 counsel; correct?

23 A. Right, uh-huh.

24 Q. And throughout your report, you cite to a  
 25 number of reported cases. Did you read all of those

1 this? I'm not here to have that kind of colloquy  
 2 with you. If you want to make light, if you want to  
 3 be sarcastic, we can do that after the deposition.

4 John, could you just ask your questions,  
 5 please?

6 MR. WATERS: No. I want to may clear my  
 7 request for the e-mail that you sent to  
 8 Professor Hazard, and the attachment, which appears  
 9 to be a draft of the report prepared by you, whether  
 10 you claim as a scrivener or otherwise. I think I'm  
 11 entitled to it, and I think I requested it before. I  
 12 think it's different from what's otherwise happening.

13 In any case, that's my request, and if  
 14 you're telling me that you refuse to produce it and  
 15 we've exhausted that, then tell me that, and we'll  
 16 proceed.

17 MR. GILMAN: I'll take your request under  
 18 advisement.

19 John, if you have questions, let's use the  
 20 time permitted.

21 MR. GROSSBART: I'm just waiting for you  
 22 guys to finish.

23 EXAMINATION

24 BY MR. GROSSBART:

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1 cases?

2 A. I have read all of them previously. I  
 3 didn't read them on this occasion.

4 Q. Okay. Were they selected for this report  
 5 for you by counsel?

6 A. Yes.

7 Q. You mention on the Materials Considered  
 8 page of your report, Exhibit 2002-II, Track II, the  
 9 transcript of the deposition of Mr. Gagne. Do you  
 10 see that?

11 A. Yes.

12 Q. Were you provided the exhibits that were  
 13 marked during the course of that deposition?

14 A. I think some of them, but I don't think  
 15 all of them.

16 Q. All right. What about the exhibits that  
 17 were referred to and utilized in that deposition, but  
 18 not actually marked in that deposition?

19 A. I don't know about that.

20 Q. Can you identify – well, you would agree  
 21 with me that no specific exhibit from Mr. Gagne's  
 22 deposition or, for that matter, any deposition, is  
 23 identified as such on this – let me rephrase that.

24 Does the last page of your report identify  
 25 documentary exhibits to Mr. Gagne's deposition, to